

**Letter of Findings Number: 01-20130061P  
Tax Administration  
For Tax Year 2012**

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**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** IC § 6-8.1-10-5; IC § 6-8.1-10-1.

Taxpayer protests the imposition of a penalty and interest on a returned check.

**STATEMENT OF FACTS**

Taxpayer is an Indiana resident who made a payment to the Indiana Department of Revenue ("Department") towards her Indiana individual income tax. Taxpayer made the payment by check; the payment was returned unpaid by Taxpayer's bank. The Department then assessed a ten percent penalty and imposed interest. Taxpayer protests the imposition of the penalty and interest. This Letter of Findings was written based on a telephone hearing and on the information found in the protest file. Further facts will be presented as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

Taxpayer's protest letter, dated January 24, 2013, states the following:

An estimated payment for 2012 taxes was made in the amount of [...] for the 2012 tax year. This was done to prepay expected tax that would result from an unusually large capital gain near the end of 2012. This amount is not actually due yet.

The protest letter further states:

Because the amount of money in [Taxpayer's] bank account was unusually large due to the capital gain, she had prudently requested the bank to place a red flag on the account to prevent unauthorized withdrawals.

Upon issuing the [...] check to the Indiana Department of Revenue, she believed that the red flag had been removed, and there were sufficient funds to pay the check upon presentation. However, there apparently was a miscommunication between [Taxpayer], and the bank personnel.

In other words, Taxpayer made a payment by check to the Department; the check was returned because a security hold had been placed on Taxpayer's bank account. The Department assessed a penalty pursuant to IC § 6-8.1-10-5, which states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section. (Emphasis added).

Taxpayer provided the Department with a copy of a letter from her bank, explaining that a miscommunication between Taxpayer and the bank had occurred regarding the account. Taxpayer has established that there was reasonable cause for the check not being honored. Also, Taxpayer protested the imposition of interest. Under IC § 6-8.1-10-1(e) interest cannot be waived by the Department. However, in Taxpayer's case, she was making a payment before the tax due date—in effect, Taxpayer made an estimated tax payment in advance of the due date (and as noted, the check was returned unpaid by Taxpayer's bank). In Taxpayer's case it is not a matter of interest waiver—no interest was in fact due.

**FINDING**

Taxpayer's protest regarding the penalty and interest is sustained.

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